

HANGLEY ARONCHICK SEGAL & PUDLIN
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Attorneys for Lockheed Martin Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

MICHAEL LEESE, ASHLEY LEESE, A. LEESE, a minor, I. LEESE, a minor, and A. K. LEESE, a minor 5 Victoria Court Moorestown, NJ 08057	: CIVIL ACTION
.....	: No. _____
 Plaintiffs,	: NOTICE OF REMOVAL
.....	:
v.	:
 LOCKHEED MARTIN 6801 Rockledge Drive Bethesda, MD 20817	:
 and	:
 ORLEANS HOME BUILDERS, INC. One Greenwood Square, Suite 101 3333 Street Road Bensalem, PA 19020	:
 Defendants.	:

NOTICE OF REMOVAL

Defendant Lockheed Martin Corporation (“Lockheed Martin”), incorrectly identified as “Lockheed Martin” in the Complaint, files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446 to remove this action from the Superior Court of New Jersey, Burlington County, Law

Division, Civil Part, where it is now pending as Case No. L-2487-11, to the United States District Court for the District of New Jersey. This Court has both federal-question and diversity jurisdiction over this action. The grounds for removal are as follows:

1. Pursuant to Rule 10.1(a) of the Local Civil Rules, the addresses of the named parties are as follows: Upon information and belief, Plaintiffs Michael Leese, Ashley Leese, A. Leese, I. Leese, and A. K. Leese reside at 5 Victoria Court, Moorestown, NJ 08057. Defendant Lockheed Martin maintains its principal place of business at 6801 Rockledge Drive, Bethesda, MD 20817. Upon information and belief, Defendant Orleans Homebuilders, Inc. (“Orleans”) maintains its principal place of business at One Greenwood Square, Suite 101, 3333 Street Road, Bensalem, PA 19020.

2. Plaintiffs commenced this action by filing a complaint in the Superior Court of New Jersey, Burlington County on or about July 26, 2011 (the “Complaint”). Lockheed Martin received an incomplete copy of the Complaint on August 3, 2011, and a complete copy on August 4, 2011. (A true and correct copy of the complete Complaint as served on Lockheed Martin is attached hereto as part of Exhibit A.)

3. The Complaint asserts claims against only the following two defendants: Lockheed Martin and Orleans.

4. Although removal generally requires the consent of all defendants, “the failure of an improperly joined party to participate in the notice will not defeat removal.” 14C Wright & Miller, Federal Practice & Procedure § 3730 (4th ed. 2009); see Balazik v. County of Dauphin, 44 F.3d 209, 213 n.4 (3d Cir. 1995); Jernigan v. Ashland Oil Inc., 989 F.2d 812, 815 (5th Cir. 1993); Michaels v. New Jersey, 955 F. Supp. 315, 319 (D.N.J. 1996). A defendant is improperly joined where the claims against it are barred by a bankruptcy court injunction. See

Brown v. Jevic, 575 F.3d 322, 326-27 (3d Cir. 2009). Here, any liability Defendant Orleans might bear for the claims asserted by plaintiffs in this action was discharged by order of the United States Bankruptcy Court for the District of Delaware, which is attached hereto as Exhibit B.¹ Pursuant to that order, Plaintiffs' instant claims against Orleans are barred. Accordingly, Orleans was improperly joined as a defendant and Defendant Lockheed Martin may remove this action without Orleans' consent.

5. The Complaint alleges violations of, *inter alia*, the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6901 *et seq.*, against Defendant Lockheed Martin.

6. Under 28 U.S.C. § 1331, this Court has original jurisdiction over Plaintiffs' claims arising under RCRA.

7. Furthermore, this Court has supplemental jurisdiction over the state law claims pled against Defendants pursuant to 28 U.S.C. § 1337(a) because they form part of the same case or controversy as the claims that fall within the Court's federal question jurisdiction.

8. Defendant Lockheed Martin is, and at all relevant times has been, a corporation organized and existing pursuant to the laws of the State of Maryland. Lockheed Martin maintains its principal place of business at 6801 Rockledge Drive, Bethesda, MD 20817.

9. Defendant Orleans's citizenship is irrelevant to this Notice of Removal because, as noted in Paragraph 4 above, Orleans was improperly joined as a party. See In re Briscoe, 448 F.3d 201, 215-16 (3d Cir. 2006). In any event, upon information and belief, Orleans is, and at all relevant times has been, a corporation organized and existing pursuant to

¹ Attached hereto as Exhibit C is a letter from Lawrence J. Dugan, counsel for Defendant Orleans, to Julie A. LaVan, Esquire, counsel for the plaintiffs, explaining that the Bankruptcy Court's order bars plaintiffs' claims in this action.

the laws of the State of Delaware. Defendant Orleans maintains its principal place of business at One Greenwood Square, Suite 101, 3333 Street Road, Bensalem, PA 19020.

10. Upon information and belief, Plaintiffs Michael Leese, Ashley Leese, A. Leese, I. Leese, and A. K. Leese, are, and at all relevant times have been, individuals who are citizens of the State of New Jersey.

11. Accordingly, for purposes of diversity, plaintiffs and defendants are deemed citizens of different states. In addition, plaintiffs seek compensatory damages and attorneys' fees that, based on the Complaint, are alleged to exceed \$75,000.

12. Based upon the diversity of citizenship of the parties to this action and that the amount in controversy, exclusive of interests and costs, exceeds \$75,000, the United States District Court for the District of New Jersey has original jurisdiction over this action under 28 U.S.C. § 1332(a).

13. The time for defendants to answer, move, or otherwise plead has not yet expired.

14. This action may be properly removed to the United States District Court for the District of New Jersey pursuant to 28 U.S.C. § 1441 *et seq.* because this Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367(a), and this notice is being filed within thirty days of service of the Complaint. Independently, this Court also has original jurisdiction over this action under 28 U.S.C. § 1332(a) because the parties are deemed citizens of different states, the amount in controversy exceeds \$75,000, none of the defendants is a citizen of New Jersey, and this notice is being filed within thirty days of service of the Complaint.

15. Venue is proper in the United States District Court for the District of New Jersey because the State Court action was filed in this District. See 28 U.S.C. § 1441(a).

16. Concurrent with the filing of this Notice of Removal, Lockheed Martin is filing a copy of the Notice of Removal with the Clerk of the Superior Court of New Jersey, Burlington County.

17. Exhibit A hereto includes “all process, pleadings and orders” served upon Lockheed Martin in this action. See 28 U.S.C. § 1446(a).

WHEREFORE, notice is given that this action is removed from the Superior Court of New Jersey to the United States District Court for the District of New Jersey.

HANGLEY ARONCHICK SEGAL & PUDLIN

By: /s/ Robert A. Wiygul
Robert L. Ebby
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(856) 616-2100
Attorneys for Defendant Lockheed Martin Corporation

Dated: September 2, 2011

Of Counsel:

Steven T. Miano
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27th Floor
Philadelphia, PA 19103-6933
215-496-7025

CERTIFICATION PURSUANT TO N.J. LOCAL RULE 11.2

Pursuant to Rule 11.2 of the New Jersey Local Rules of Civil Procedure, the undersigned hereby certifies that claims in the above captioned action are not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

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CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that a true and correct copy of the foregoing Notice of Removal was served via first class mail on plaintiffs' counsel listed below:

Julie A. LaVan, Esq.
LaVan Law
11 East Main Street, 2nd Floor
Moorestown, NJ 08057
Attorney for Plaintiffs

Lawrence J. Dugan, Esq.
Orleans Homebuilders, Inc.
3333 Street Road, Suite 101
Bensalem, PA 19020
Attorney for Defendant Orleans Homebuilders, Inc.

/s/ Robert A. Wiygul
Robert A. Wiygul

Dated: September 2, 2011